

**Executive Summary of the Report to the Committee on Enforced Disappearances in
View of the Follow-up Dialogue with Mexico**

by



**Fundación para la Justicia y el Estado Democrático de Derecho, A.C.
TRIAL International**

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I. Background

1. On 13 February 2015 the Committee on Enforced Disappearances (hereinafter, “the Committee”) adopted its concluding observations on the report submitted by Mexico under Art. 29, para. 1, of the International Convention on the Protection of All Persons from Enforced Disappearance (hereinafter, “the Convention”). Pursuant to Art. 29, para. 4, of the Convention, the Committee requested Mexico to provide, by 13 February 2018 at the latest, relevant and updated information on the implementation of the recommendations contained in the concluding observations. On 20 February 2018, Mexico submitted its report (hereinafter, “the 2018 State’s report”) and the Committee decided to discuss the contents of the latter during its 15th session.
2. In view of the follow-up dialogue that will take place in November 2018, the *Fundación para la Justicia y el Estado Democrático de Derecho* and TRIAL International submit an alternative report to the Committee to illustrate the limited implementation of some of its previous recommendations¹ and the remaining obstacles to ensure that Mexico fulfils its obligations under the Convention. The alternative report is submitted in its integral version in Spanish and, with the aim of facilitating the work of the members of the Committee, in this summarised English version.
3. In the light of the areas of work and expertise of the two organisations, the alternative report focuses on the enforced disappearance of migrants and the corresponding international obligations of the State pursuant to the Convention; the pitfalls in the investigation of disappearances and the prosecution and sanction of those responsible; and the absence of adequate guarantees to ensure the independence of prosecutorial authorities and, in particular, of the future Attorney General’s Office (*Fiscalía General de la República*). Moreover, reference is made to the main obstacles encountered in the enforcement of the interim measures ordered by the Committee pursuant to Art. 30, para. 3, of the Convention.
4. All the information provided must be read having in mind that, as the Committee – among other international human rights bodies² – observed, there is a “situation of widespread disappearances in much of the State party’s territory”.³ Pursuant to international law, this entails an aggravated responsibility for Mexico, both in terms of prevention and eradication of the crime.
5. **The number of reported disappeared persons increased steadily since 2015**, thus

¹ For this purpose, the assessment of the level of implementation of its recommendations conducted by the Committee on Enforced Disappearances is also considered: see Committee on Enforced Disappearances (CED), UN Doc. CED/C/11/2 of 8 November 2016.

² See, among others, Working Group on Enforced or Involuntary Disappearances (WGEID), *Follow-up Report on its Mission to Mexico*, UN Doc. A/HRC/30/38/Add.4 of 11 September 2015, para. 7; and Inter-American Commission on Human Rights, *Report on the Human Rights Situation in Mexico*, OEA/Ser.L/V/II Doc. 44/15 of 31 December 2015, paras. 6, 100 and 105.

³ CED, *Concluding Observations on Mexico*, UN Doc. CED/C/MEX/CO/1 of 13 February 2015, para. 10.

pointing at the inadequacy of the responses so far adopted by the State. As of April 2018, the State's registry of disappeared persons – admittedly plagued by underreporting and inconsistencies – contained **37,435** cases.⁴ This alarming figure confirms the seriousness of the situation and the imperative of the adoption of exceptional measures.

6. Art. 33, para. 1, of the Convention establishes that if the Committee receives reliable information indicating that a State party is seriously violating the provisions of the Convention, it may request one or more of its members to **undertake a visit** to the country concerned and report back to it without delay. Since 2014, the Committee repeatedly requested to be enabled to carry out a visit to Mexico, but this has been to no avail. In the light of the latest political and institutional changes in the country, **it is recommended that the Committee reiterates its request with a view to conduct such visit after it adopts its new concluding observations.**
7. Moreover, pursuant to Art. 34 of the Convention, the Committee may urgently bring to the attention of the General Assembly of the United Nations, through the Secretary-General, the fact that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State party. Having in mind the alarming figure of disappeared persons in Mexico and its steady increase since 2015, **the Committee should consider a referral to the General Assembly.**

II. Disappearance of Migrant Persons

8. In its concluding observations of February 2015, the Committee noted with concern that “there have been **numerous cases of disappearances of migrants, including migrant children**, and that these cases include cases of enforced disappearances”.⁵ The Committee also observed that this dramatic situation poses exceptional challenges for full observance of the rights to justice and truth embodied in the Convention.
9. By its own nature, the phenomenon of disappeared migrants is characterised by unprecedented difficulties in terms of analysis and documentation, as well as practical challenges in search operations and in the adoption of effective legal and humanitarian responses.⁶ The fact that different countries are involved calls for a **careful reading and application of States parties' obligations in terms of cooperation, as spelled out in Arts. 14 and 15 of the Convention.**
10. In June 2018, the Committee issued its concluding observations on Honduras, whereby it addressed the issue of missing and forcibly disappeared migrants. In this regard, it recommended the **strengthening of the cooperation between the countries of origin**

⁴ See <http://secretariadoejecutivo.gob.mx/rnped/estadisticas-fuerofederal.php>.

⁵ CED, *Concluding Observations on Mexico*, *supra* note 3, para. 23 (emphasis added).

⁶ On this subject, see Working Group on Enforced or Involuntary Disappearances, *Report on Enforced Disappearance in the Context of Migration*, UN Doc. A/HRC/36/39/Add.2 of 28 July 2017.

and destination, highlighting the importance of the participation of the victims and civil society. It also recalled the obligations to redouble the efforts to prevent and investigate such disappearances, to prosecute those responsible and to adequately protect all those involved in the investigation; to guarantee the prompt search for the disappeared and, in the event of their death, the identification and restitution of their remains; and to establish an updated database of missing migrants. The Committee also recommended to gather ante-mortem data and integrate forensic database; to ensure that the relatives of the disappeared, regardless of the place where they live, obtain information and are closely associated with the investigation and the search of their loved ones; and to strengthen the cooperation with the authorities of other States in the region to promote the search for disappeared migrants and the investigation of those responsible.⁷ It is important that the Committee takes these recommendations into account in the course of the follow-up dialogue with Mexico, especially when examining the measures adopted by the latter to enforce its obligations pursuant to Arts. 14 and 15 of the Convention.

A. The Level of Implementation of the Committee's Previous Recommendations

11. In its concluding observations of February 2015, the Committee included a number of recommendations **specifically addressing the issue of missing and forcibly disappeared migrants**. It requested Mexico to cooperate with the countries of origin and destination, with input from victims and civil society to ensure an effective mechanism of transnational search and access to justice. In particular, it recommended to guarantee: (a) that **searches are conducted for disappeared migrants** and that, if human remains are found, they are identified and returned; (b) that ante-mortem information is compiled and entered into the **ante-mortem/post-mortem database**; and (c) that the **relatives of the disappeared persons, irrespective of where they reside, have the opportunity to obtain information and take part in the investigations and the search** for the disappeared persons.⁸
12. In November 2016, the Committee rated "B" the level of implementation of these recommendations, acknowledging that progress had been made. Indeed, Mexico adopted some measures that represent significant advancements. However, obstacles and loopholes remains and much remains to be done in order to ensure an effective transnational search of missing or disappeared migrants and access to justice for their families.
13. As of today, **Mexico does not count on an updated and complete register of missing and forcibly disappeared migrants**. The fact that this figure remains unknown undermines the effectiveness of search operations, as well as actions undertaken to

⁷ CED, *Concluding Observations on Honduras*, UN Doc. CED/C/HND/CO/1 of 1 June 2018, para. 29 (emphasis added).

⁸ CED, *Concluding Observations on Mexico*, *supra* note 3, para. 24 (emphasis added).

ensure access to justice and redress. Without knowing the real scope of the phenomenon and the identity of those to be searched, any policy to locate missing and forcibly disappeared migrants and investigations to establish the existence of criminal responsibilities are doomed.

14. The **ante-mortem/post-mortem database** is under construction. However, it has not been finalised yet and it is especially incomplete when it comes to missing and forcibly disappeared migrants, mostly due to the **lack of inter-connection with relevant databases in Central American countries**. Accordingly, the ante-mortem/post-mortem database has so far been used mostly for statistical purposes, rather than as an effective tool to facilitate search operations and investigations.
15. In the light of the above, the cases where mortal remains of missing and forcibly disappeared migrants have been located and exhumed in Mexico are due to the work carried out by the Forensic Commission established in August 2013,⁹ which also guaranteed the identification and restitution of the said remains. However, the **mandate of the Forensic Commission is limited to the identification of the mortal remains located in the common graves in San Fernando, Tamaulipas and recovered in Cadereyta, Nuevo León**. This limits the chances to locate and identify other missing and forcibly disappeared migrants. Moreover, the Forensic Commission has been **confronted with a series of obstacles – mostly bureaucratic and related to the political will of other Mexican authorities – which hampered its operations**. This is especially grave, considering the “forensic emergency” faced by Mexico in view of the hundreds of mass graves that are being discovered and the corresponding thousands of mortal remains that must be duly identified and returned to the families. At present, **Mexican expert services units (*servicios periciales*) are understaffed and not adequately equipped, and lack the necessary autonomy and independence, due to their subordination to prosecutorial authorities**.

For more details, please refer to paras. 26-59 of the integral version of the alternative report

Recommendations

- Ensure that **accurate and up-to-date data regarding the number of missing and forcibly disappeared migrants in Mexico are collected and made public**. There must be a permanent control of the information and a centralized database that allows to double check records, complement, verify and specify the divergent data and facilitate access and consultation from the countries of origin of the victims.

⁹ Created in August 2013 on the basis of an agreement among the Office of the Attorney General of Mexico, civil society organisations, and the Argentine Forensic Anthropologic Team (EAAF) and mandated to identify the mortal remains found in the mass graves concerning three major massacres (known as “the massacre of 72 migrants in Tamaulipas”, “the 49 common graves of San Fernando”, and “the 49 trunks of Cadereyta”).

- **Guarantee the inter-connection between the ante-mortem/post-mortem database in Mexico and the databases in the countries in Central America.** These data must be handled, systematised and interpreted by a multidisciplinary team.
- **Expand the mandate of the Forensic Commission and reproduce its good practices** to the extent possible, in order to facilitate the operations of identification and restitution of mortal remains.
- **Allocate sufficient human and financial resources and set up autonomous expert services units.**
- **Adopt a national plan to locate common graves and clandestine burial places, exhume, respect, identify and return the mortal remains** to their loved ones.

B. The General Law on Disappeared Persons and the Obstacles in Its Implementation

16. On 17 November 2017, a General Law on Enforced Disappearance of Persons, Disappearance committed by Non-State Actors and the National System of Search of Persons (hereinafter, “the General Law”) was enacted. It entered into force on 16 January 2018 and it contains several relevant provisions with regard to missing and forcibly disappeared migrants.
17. The adoption of the General Law is a significant achievement. However, its **level of implementation is far from satisfactory**. Firstly, the **deadlines** (i.e. 16 April 2018 and 16 July 2018 respectively) fixed for the setting up of organs, such as the National Search Commission and state search commissions, already **expired, while many of these institutions have not been established yet** (notably, the National Search Commission has been established, but is not formally operating, while only 8 states complied with their duty to set up state search commissions). In the absence of these new organs in charge of the search of missing and forcibly disappeared persons, including migrants, this task is conducted by prosecutorial authorities, with alarmingly scarce results. Notably, **even when the National Search Commission will start its work, it does not count on the necessary resources to adequately discharge its extremely wide mandate**.
18. Moreover, the **National Search Protocol has not been designed nor adopted**, thus leaving thousands of persons without an effective tool to unveil the truth on the fate and whereabouts of their loved ones. On the other hand, the **Protocol on the Investigation** of cases of disappeared persons was adopted, but **relatives of disappeared persons and their representative organisations were not adequately involved in the process of the design of this tool**. The outcome is especially disappointing with regard to missing and forcibly disappeared migrants, as **investigative measures that take into account the transnational scope of the phenomenon are not currently envisaged**.

19. The **budget allocated for the implementation of the General Law is insufficient** and does not guarantee to assign the needed technical, financial and human resources in the long term. The **funds to ensure adequate and regular training** of all persons and authorities in charge of the enforcement of the General Law have not been secured either. These drawbacks have been flagged out by the National Citizen Council (*Consejo Nacional Ciudadano*) mandated to support the National Search System. Nevertheless, no effective measures to tackle the described situation have been adopted yet and **no institution at the federal level is leading the process of enforcement of the General Law.**

For more details, please refer to paras. 60-84 of the integral version of the alternative report

Recommendations

- ❑ **Enforce without delay the General Law**, especially those provisions relevant for missing and forcibly disappeared migrants, guaranteeing the principle of participation of the relatives of the victims, regardless of where they reside.
- ❑ **Establish without further delay the organs provided for by the General Law and ensure their functioning, especially with regard to the National Search Commission and the state search commissions.**
- ❑ Ensure that all the instruments and documents deriving from the General Law (regulations, protocols, programmes, guidelines, rules of procedure, etc.) are adopted without any further delay and have a **special and differentiated approach in the cases of missing and disappeared migrants**, according to the victims' specific needs and their vulnerability. The **Protocol on Investigation must be amended accordingly.**
- ❑ Allocate the **human, financial and technical resources necessary for the implementation of the General Law**, and ensure **regular and specialized training of all competent authorities** on the measures foreseen by the General Law. Also, **ensure adequate vertical and horizontal coordination between the authorities** of the different levels in the implementation of the General Law.

C. The Problems Encountered in the Functioning of the Investigative Unit on Crimes against Migrants and the Mechanism of External Support for Search and Investigation

20. On 16 December 2015, the Office of the Attorney General of the Republic adopted an agreement establishing an **Investigation Unit on Crimes against Migrants** (hereinafter, "Migrants Unit") and an **External Support Mechanism for Search and Investigation** (hereinafter, "MAE").

21. The establishment of the Migrants Unit and the MAE represent a significant progress. However, their **functioning encounters a number of obstacles, eventually**

undermining their effectiveness. With regard the Migrants Unit, it is **understaffed and counts with a severely limited budget.** The investigations pursued so far by the Migrants Unit were characterised by **extreme fragmentation and failed to duly analyse the context** in which the crimes concerned took place, eventually fostering the impunity of perpetrators. The **work of the Migrants Unit is often slowed by overly bureaucratic and formalistic procedures.**

22. Pursuant to a recent reform, the Migrants Unit and the MAE have been **subordinated to the newly created Specialised Prosecutors' Office on Enforced Disappearance** (*Fiscalía Especializada en Investigación de los Delitos de Desaparición Forzada*). This raises a number of concerns relating to the scope of the investigations carried out and the already mentioned obstacles concerning the overall implementation of the General Law.
23. The work of the **Migrants Unit and the MAE is often plagued by unnecessary formalisms that frustrate their very object and purpose**, hindering access to justice and remedies for relatives of disappeared migrants leaving outside Mexico. The situation is worsened by the **limited knowledge of the Migrants Unit and the MAE, their mandate and functions among consular personnel and embassies.** This lack of awareness ultimately undermines the use of the mechanism and leaves relatives of disappeared migrants to bear the brunt of the demarches that must be undertaken to lodge complaints and to seek to unveil the truth on the fate and whereabouts of their loved ones and obtain justice and redress. Finally, it must be pointed out that **the only attaché of the Attorney General's Office for Central America resides in Guatemala** and this is clearly insufficient to ensure a smooth functioning of the Migrants Unit.
24. At present, the Migrants Unit and the MAE experience a **lack of regular cooperation with other authorities, such as the National Institute for Migration, the Ministry of Foreign Affairs, the National Search Commission and the Executive Commission for the Support to Victims.** There currently is **no mechanism of coordination** to facilitate the interaction among these institutions and this creates several **difficulties, for instance in obtaining humanitarian visas to travel to Mexico, in maintaining regular contacts with the prosecuting authorities,** as well as in obtaining **support and assistance in the countries of origin.** The existence of these problems is **not adequately addressed by the guidelines on the functioning of the MAE** that have not even been amended to reflect the entry into force of the General Law. Finally, **relatives of migrants disappeared in Mexico that reside abroad, especially in Central America, have not been able to obtain the measures of psycho-social support they are entitled to, due to the restrictive requirements imposed on them,** that do not reflect their situation of extreme vulnerability nor the conditions of poverty and insecurity in which they live.

For more details, please refer to paras. 85-115 of the integral version of the alternative report

Recommendations

- ❑ Secure **adequate financial, technical and human resources** for the Migrants Unit to discharge its mandate and ensure that its subordination to the Specialised Prosecutor's Office on Enforced Disappearance does not hinder its operations nor results in an overly narrow scope of the investigations.
- ❑ Guarantee that the work of the Migrants Unit and the MAE is **not obstructed by unnecessary formalisms that frustrate their object and scope** and fails to reflect the specific situation of vulnerability of victims and their families.
- ❑ **Raise awareness on the mandate and functioning of the Migrants Unit and the MAE** in the countries of origin of missing and disappeared migrants.
- ❑ Ensure that the **MAE functions on a daily basis** and its offices follow the same timetable of the competent Mexican authorities.
- ❑ Ensure that **Mexican Embassies and Consulates count on duly trained personnel** that can guarantee the proper functioning of the MAE and provide adequate support to victims and their relatives.
- ❑ **Increase the number of attachés covering Central America** to facilitate the work of the Migrants Unit and the MAE, ensuring that there is one attaché for each country in the region. **Prosecutors of the Migrants Unit must conduct regular visits to the countries where there are ongoing cases, especially in Central America.** Such visits must be announced in advance, envisage a **comprehensive agenda and allow enough time** for victims and relatives to meet with the authorities.
- ❑ Establish **effective cooperation and coordination** among the MAE, the Attorney General's Office, the Ministry of Foreign Affairs, the National Institute for Migration, the National Human Rights Commission, and the Executive Commission for the Support to Victims (hereinafter, "CEAV"), the judiciary and any other competent authority to guarantee the effectiveness of the MAE and adequate support to victims.
- ❑ Ensure that **relatives of disappeared migrants have access in their countries of residence to the measures of social support and reparation** to which they are entitled pursuant to the General Law on Victims. In this regard, the necessary **cooperation agreements must be concluded** with the countries concerned and the CEAV must refrain from imposing overly restrictive criteria that do not take into account the extreme vulnerability of the persons concerned.

- **Amend the Guidelines on the functioning of the MAE**, reflecting the entry into force of the General Law and the related institutional changes, as well as the problems experienced so far by relatives of missing and disappeared migrants, as spelled out in the alternative report.

III. The Flaws in the Investigation of Cases of Disappearance and in the Prosecution and Sanction of Those Responsible and the Lack of Adequate Guarantees of Independence of the Prosecutorial Authorities

25. Notwithstanding the recommendations issued by the Committee in February 2015, the majority of **investigations on cases of enforced disappearance are neither effective nor thorough, with the consequence that impunity remains rampant**. This situation is worsened by the **endemic corruption** in the country. Investigations are especially ineffective when State agents are allegedly involved, directly or indirectly, in the commission of the crime. In general, the **authorities in charge do not conduct field visits or a thorough examination of the potential crime scene and evidences are not preserved in an adequate manner**. When the crime scene is indeed examined and **evidences are collected, there is an endemic delay in the analysis of such elements that results in the lack of a clear investigative hypothesis**. The authorities in charge of the investigation tend to limit the scope of their analysis, without exploring the potential connections between different cases and failing to conduct a contextual analysis. Furthermore, there seems to be a **lack of effective cooperation among different State's agencies that do not exchange information among them, thus hampering the overall outcome of investigations**. The **shortage of financial and human resources** for members of the police force and the Public Prosecution Service represent a major obstacle for the justice system.
26. The described situation is even **worse in cases involving migrant persons** due to the practical difficulties posed by the transnational nature of this phenomenon. In this context, the **protection of victims, their relatives and representatives, as well as of witnesses and all persons involved in the investigation is also exceptionally challenging** and, at present, the **measures adopted by Mexico to address the problem are insufficient**.
27. In order to increase the effectiveness of investigations and to offer adequate guarantees in this domain, it is essential to ensure that **all the authorities concerned, including judges and prosecutors at all levels (federal, state and municipal) are independent and impartial**. In particular, the **public prosecution service must be made fully autonomous from the executive branch**, as envisaged in the 2014 reform to the Constitution. This shall be reflected and regulated in the **Organic Law on the new**

General Attorney's Office (*Fiscalía General de la República*), which has not been enacted yet. Previous drafts of this law did not meet international standards and did not offer enough guarantees with regard to the independence of the General Attorney nor envisaged an effective system to ensure his or her accountability. The draft currently under consideration, designed with the involvement of civil society organisations, reflects these concerns and envisaged adequate measures to ensure the effectiveness of the new institution.

For more details, please refer to paras. 116-127 of the integral version of the alternative report

Recommendations

- Authorities in charge of the investigation of cases of disappearance must conduct **field visits and ensure a thorough examination of the potential crime scene, as well as adequate preservation of evidences.**
- **Ensure coordination among investigative authorities at all levels and avoid undue fragmentation** of the investigation.
- Guarantee that the police and the public prosecutorial service count on the necessary **financial, technical and human resources** and receive **regular training.**
- Take all measures to ensure that **victims, their relatives and representatives, as well as witnesses and all persons participating in the investigation are protected against intimidation,** reprisals and ill-treatment. In cases involving **migrants,** the said **measures must be adapted** to address the transnational nature of the phenomenon, as well as the extreme vulnerability of the persons concerned.
- Ensure that the authorities in charge of the enforcement of justice at all levels and, in particular, the future **General Attorney's Office and the personnel assigned to it, are fully independent and autonomous from the executive branch.** An **effective oversight of public prosecution services** must be ensured, the **selection process must be transparent, and an effective system for ensuring their accountability must be established.** The **Organic Law on the General Attorney's Office** must reflect these minimum standards and must be adopted and enforced without further delay.

IV. The Obstacles Encountered in the Implementation of Interim Measures in the Context of Urgent Actions

28. The **majority of the urgent actions** registered by the Committee under to Art. 30 of the Convention **concern Mexico,** as well as the interim measures ordered pursuant to Art. 30, para. 3. The Committee informed that **Mexico did not reply in more than 70 of the urgent actions registered and failed to respond to follow-up notes in more than 20 urgent action cases.** Moreover, **Mexican authorities affirmed, also on the occasion**

of public events, that they do not consider urgent actions and interim measures of a binding nature. This is especially alarming, having in mind the grave nature of the matters at stake. **This attitude amounts to a breach by Mexico of its obligation to perform in good faith the treaty and the obligations stemming from it.**

29. Even when Mexico replied to the Committee, the actions taken **to search and find disappeared persons and to implement the interim measures ordered were rarely effective.** In particular, the **actions undertaken are sporadic and isolated and not conceived as a previously defined search and investigation strategy.** Authorities heavily rely on victims' relatives and their representatives and **do not act *motu proprio*, seldom carrying out on-site investigations and without any inter-agency coordination or joint strategy among the different authorities concerned.**

For more details, please refer to paras. 128-139 of the integral version of the alternative report

Recommendations

- **Adopt without delay all the measures that may be necessary to ensure the implementation of the Committee's requests in the context of its urgent actions' procedure and interim measures** pursuant to Art. 30 of the Convention.
- Recognise the **binding nature of interim measures** under Art. 30, para. 3, of the Convention and **engage in a regular dialogue with the Committee** in this regard, promptly replying to communications and follow-up notes from the latter.